Deloitte. 德勤

Tax
Issue P317/2020 – 27 July 2020

Tax Analysis

European Union - Mandatory Tax Reporting for certain cross-border arrangements

Authors：

Shanghai
Vicky Wang
Partner
Tel：+86 21 61411035
Email：vicwang@deloitte.com.cn

Hong Kong
Claus Schuermann
Partner
Tel：+852 22387884
Email：clschuermann@deloitte.com.hk

Beijing
Jessie Gu
Director
Tel：+86 10 85124131
Email：jgu@deloitte.com.cn

1. What is DAC6 and who is affected?

The European Union (EU) is introducing a new reporting regime called "DAC6" (EU Directive for Administrative Cooperation in (Direct) Taxation, 6th version) in order to increase the level of transparency surrounding potential harmful tax practices. DAC 6 requires EU intermediaries (or, under certain circumstances, relevant taxpayers) to provide information on reportable cross-border transactions involving at least one EU member state to the appropriate tax authorities. The tax authorities, in turn, must exchange information periodically with their European counterparts. Any business that has cross-border transactions involving the EU needs to consider this new regulation.

An intermediary may be any person (e.g. law firms, banks, tax consultancies established in the EU) that designs, markets, organises or makes available for implementation, or manages the implementation of a reportable cross-border arrangement. As the definition of an EU intermediary is so broad, it could capture not only service providers but potentially in-house tax functions advising other associated entities. Taxpayers benefitting from a reportable cross-border arrangement may have to report if the intermediary does not or cannot report (e.g. a non-EU agent). Furthermore, any participants in a cross-border arrangement involving the EU are generally expected to obtain proof that reporting has occurred (or was not required) and will likely want to maintain oversight of information to monitor any tax exposure.

Accordingly, an APAC taxpayer who does not have an EU agent in connection with a reportable transaction, or who does have an EU agent but that agent fails to report will need to pay special attention to whether any reporting obligation falls on them, in order to minimize inadvertent penalties.

2. What are the hallmarks of a reportable cross-border arrangement?

Not all cross border transactions involving the EU are reportable. Arrangements that must be reported are those that meet one or more of the hallmarks listed below in Categories A, B, C, D, or E. Definitions are very broad and all businesses need to consider how they will apply. An assessment of whether a particular transaction is reportable or not is a first step in the compliance exercise.

Category A - Generic hallmarks

1. **Confidentiality:** Arrangement requires a condition of confidentiality to not disclose the arrangement to other intermediaries or tax authorities
2. **Contingent Fee:** Fixed by reference to:
   a) Amount of tax advantage; or,
   b) Whether or not a tax advantage is actually derived.
3. **Substantially standardised documentation** available to more than one taxpayer without requiring substantial customisation

Category B - Specific hallmarks

1. **Losses:** Contrived steps to acquire losses in order to offset or reduce tax liability, including through transfer of those losses to another jurisdiction or by acceleration of the use of those losses
2. **Conversion:** Income into capital, gifts or other categories of revenue which are taxed at a lower level
3. **Circularity:** Transactions resulting in round-tripping of funds, namely through involving interposed entities without other primary commercial function

Category C - Specific hallmarks related to deductible cross-border transactions

1. **Cross border deductible payment between associated enterprises** and any of the following applies:
   a) Recipient has no tax residence
   b) i. Recipient subject to zero or almost zero tax rate
      ii. Recipient is resident in non-cooperative jurisdiction
   c) Recipient has full tax exemption
   d) Recipient benefits from preferential tax regime
2. **Depreciation**: on same asset deducted in more than one jurisdiction
3. **Claiming double taxation relief in multiple jurisdictions:** In respect of the same income or capital

For more information, please contact:

International Tax and Merger & Acquisition Tax Services National Leader

Shanghai
Vicky Wang
Partner
Tel: +86 21 6141 1035
Email: vicwang@deloitte.com.cn

Northern China
Beijing
Jennifer Zhang
Partner
Tel: +86 10 8520 7638
Email: jenzhang@deloitte.com.cn

Eastern China
Shanghai
Ye Hong
Partner
Tel: +86 21 6141 1171
Email: hoye@deloitte.com.cn

Southern China
Hong Kong
Sharon Ka Suet Lam
Partner
Tel: +852 2852 6536
Email: shalam@deloitte.com.hk

Western China
Chengdu
Tony Zhang
Partner
Tel: +86 28 6789 8008
Email: tonzhang@deloitte.com.cn

4. **Transfer of assets:** Where material difference in amount treated as payable consideration for the assets in the jurisdictions involved

Category D - Specific hallmarks concerning automatic exchange of information and beneficial ownership

1. Circumvention **of automatic exchange of information** of Financial Account information
2. Arrangements with **non-transparent** legal or beneficial **ownership chain**

Category E - Specific hallmarks concerning transfer pricing

1. Unilateral transfer pricing **safe harbour rules**
2. Transfer of hard to value **intangibles** where no reliable comparables exist and future projections are highly uncertain at the time of transfer
3. **Transfer of functions,** risks and/or assets which results in substantial profit shifting

3. What is the reporting deadline?

DAC6 initially provided a one-off reporting deadline by 31 August 2020 for arrangements implemented between 25 June 2018 and 30 June 2020, alongside a 30-day rolling window for reporting new arrangements from 1 July 2020 onwards. The trigger date for reporting was dependent on the facts and circumstances, but examples include the earliest date that the arrangement is made available for implementation, or is ready for implementation, or the first step in the implementation has taken place. Failure to meet deadlines may result in significant reputational damage and financial penalties (over €20,000 in most jurisdictions and €500,000 in some).

In June 2020, the European Council announced an optional six-month delay to reporting deadlines and exchange of information until the beginning of 2021. The majority of countries have opted to implement this delay into domestic law (e.g. UK, Belgium and Luxembourg) whereas a minority are maintaining the initial deadline (e.g. Germany, Finland and Austria), resulting in differing reporting timelines across the EU.

4. How can we help you?

The regulatory timeline is tight and all businesses need to take practical steps to comply. Deloitte is working closely with tax authorities and industry bodies to track implementation of DAC 6 across the EU. We are supporting a large range of businesses on the practical steps they need to be taking towards compliance, including:

- **Strategy:** Mobilising your business' response to the requirements, discussing policy, raising awareness at board level, and establishing a plan for efficient compliance.

- **Impact assessment:** Identifying transactions or structures potentially affected by the hallmarks and considering where reporting responsibility will reside.

- **Technology:** Selecting a solution for capturing arrangements that aligns with local requirements, and integrates with reporting.

- **Training:** Raising awareness within the business though eLearning modules as well as bespoke training programmes.

- **Monitoring:** Tracking regulatory changes and to make the relevant source information accessible to affected intermediaries and taxpayers.

EU MDR Reporter

Deloitte has designed the EU MDR ("Mandatory Disclosure Rules") Reporter to provide businesses with one place to go to address all of their compliance needs and help them meet the DAC6 regulations. The EU MDR Reporter can act as a repository to track all potentially relevant arrangements, allowing users to apply local rules to help determine whether reporting will be required and provide a simple process for seamless and efficient reporting. With the decision making process being documented in real time, the EU MDR Reporter will also provide you with the audit trail you need for any subsequent queries from tax authorities.

If you have any queries or needs regarding DAC6 reporting requirements, please do not hesitate to contact us.

Tax Analysis is published for the clients and professionals of the Hong Kong and Chinese Mainland offices of Deloitte China. The contents are of a general nature only. Readers are advised to consult their tax advisors before acting on any information contained in this newsletter. For more information or advice on the above subject or analysis of other tax issues, please contact:

Beijing
Andrew Zhu
Partner
Tel: +86 10 8520 7508
Fax: +86 10 8518 7326
Email: andzhu@deloitte.com.cn

Chengdu
Frank Tang / Tony Zhang
Partner
Tel: +86 28 6789 8188 / 8008
Fax: +86 28 6500 5161
Email: ftang@deloitte.com.cn
tonzhang@deloitte.com.cn

Chongqing
Frank Tang / Tony Zhang
Partner
Tel: +86 23 8823 1208 / 1216
Fax: +86 23 8859 9188
Email: ftang@deloitte.com.cn
tonzhang@deloitte.com.cn

Dalian
Jihou Xu
Partner
Tel: +86 411 8371 2888
Fax: +86 411 8360 3297
Email: jihxu@deloitte.com.cn

Guangzhou
Victor Li
Partner
Tel: +86 20 8396 9228
Fax: +86 20 3888 0121
Email: vicli@deloitte.com.cn

Hangzhou
Qiang Lu / Fei He
Partner
Tel: +86 571 2811 1901
Fax: +86 571 2811 1904
Email: qilu@deloitte.com.cn
fhe@deloitte.com.cn

Zhengzhou
Charles Gong
Partner
Tel: +86 371 8897 3701
Fax: +86 371 8897 3710
Email: charlesgong@deloitte.com.cn

Harbin
Jihou Xu
Partner
Tel: +86 451 8586 0060
Fax: +86 451 8586 0056
Email: jihxu@deloitte.com.cn

Hong Kong
Victor Li
Partner
Tel: +852 2852 1600
Fax: +852 2541 1911
Email: vicli@deloitte.com.cn

Jinan
Beth Jiang
Partner
Tel: +86 531 8518 1058
Fax: +86 531 8518 1068
Email: betjiang@deloitte.com.cn

Macau
Raymond Tang
Partner
Tel: +853 2871 2998
Fax: +853 2871 3033
Email: raytang@deloitte.com.hk

Nanjing
Frank Xu / Rosemary Hu
Partner
Tel: +86 25 5791 5208 / 6129
Fax: +86 25 8691 8776
Email: frakxu@deloitte.com.cn
roshu@deloitte.com.cn

Shanghai
Maria Liang
Partner
Tel: +86 21 6141 1059
Fax: +86 21 6335 0003
Email: mliang@deloitte.com.cn

Shenyang
Jihou Xu
Partner
Tel: +86 24 6785 4068
Fax: +86 24 6785 4067
Email: jihxu@deloitte.com.cn

Shenzhen
Victor Li
Partner
Tel: +86 755 3353 8113
Fax: +86 755 8246 3222
Email: vicli@deloitte.com.cn

Suzhou
Kelly Guan
Partner
Tel: +86 512 6289 1297
Fax: +86 512 6762 3338
Email: kguan@deloitte.com.cn

Tianjin
Bill Bai
Partner
Tel: +86 22 2320 6699
Fax: +86 22 8312 6099
Email: bilbai@deloitte.com.cn

Wuhan
Leo Wang
Partner
Tel: +86 27 8526 6618
Fax: +86 27 8526 7032
Email: leowang@deloitte.com.cn

Xiamen
Jim Chung
Partner
Tel: +86 592 2107 298
Fax: +86 592 2107 259
Email: jichung@deloitte.com.cn

About the Deloitte China National Tax Technical Centre

The Deloitte China National Tax Technical Centre ("NTC") was established in 2006 to continuously improve the quality of Deloitte China's tax services, to better serve the clients, and to help Deloitte China's tax team excel. The Deloitte China NTC prepares and publishes "Tax Analysis", "Tax News", etc. These publications include introduction and commentaries on newly issued tax legislations, regulations and circulars from technical perspectives. The Deloitte China NTC also conducts research studies and analysis and provides professional opinions on ambiguous and complex issues. For more information, please contact:

National Tax Technical Centre
Email: ntc@deloitte.com.cn

National Leader/Northern China
Julie Zhang
Partner
Tel：+86 10 8520 7511
Fax：+86 10 8518 1326
Email：juliezhang@deloitte.com.cn

Western China
Tony Zhang
Partner
Tel：+86 28 6789 8008
Fax：+86 28 6317 3500
Email：tonzhang@deloitte.com.cn

Eastern China
Kevin Zhu
Partner
Tel：+86 21 6141 1262
Fax：+86 21 6335 0003
Email：kzhu@deloitte.com.cn

Southern China (Mainland)
German Cheung
Director
Tel：+86 20 2831 1369
Fax：+86 20 3888 0121
Email：gercheung@deloitte.com.cn

Southern China(Hong Kong)
Doris Chik
Director
Tel：+852 2852 6608
Fax：+852 2851 8005
Email：dchik@deloitte.com.hk

If you prefer to receive future issues by soft copy or update us with your new correspondence details, please notify Wandy Luk by either email at wanluk@deloitte.com.hk or by fax to +852 2541 1911.